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In The
Supreme Court of the United States

JOSE ANTONIO LOPEZ,

Petitioner,

v.

ALBERTO R. GONZALES,
Attorney General of the United States,

Respondent.

REYMUNDO TOLEDO-FLORES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writs Of Certiorari To The United States Courts Of Appeals For The Eighth And Fifth Circuits

BRIEF FOR AMICI CURIAE ASIAN AMERICAN JUSTICE CENTER, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, ASIAN LAW CAUCUS, ASIAN PACIFIC AMERICAN LEGAL CENTER OF SOUTHERN CALIFORNIA, CASA OF MARYLAND, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., CENTER FOR GENDER & REFUGEE STUDIES, COALITION OF IRISH IMMIGRATION CENTERS, CUBAN AMERICAN BAR ASSOCIATION, FAMILIES FOR FREEDOM, HEBREW IMMIGRANT AID SOCIETY, HISPANIC NATIONAL BAR ASSOCIATION, JUVENILE LAW CENTER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS, LEGAL MOMENTUM, LUTHERAN IMMIGRATION AND REFUGEE SERVICE, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, NATIONAL CENTER FOR YOUTH LAW, NATIONAL COUNCIL OF LA RAZA, NATIONAL NETWORK TO END VIOLENCE AGAINST IMMIGRANT WOMEN, NEW YORK IMMIGRATION COALITION, PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., PUERTO RICAN BAR ASSOCIATION, U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

Amici curiae are organizations whose members, constituents, and clients face the real-world consequences of classifying non-citizens with simple possession offenses as drug traffickers under immigration law.[1] We speak on behalf of individuals who have lived and worked in this country from a young age, have U.S. citizen spouses and children, served this country in times of war, and face persecution abroad if deported. This brief presents actual cases of individuals whose rights will be affected by the Court's ruling, illustrating through examples the different consequences of classifying simple possession offenses as aggravated felonies.

Amici consist of the following organizations:

- Asian American Justice Center
- Asian American Legal Defense and Education Fund
- Asian Law Caucus
- Asian Pacific American Legal Center of Southern California
- CASA of Maryland
- Catholic Legal Immigration Network, Inc.
- Center for Gender & Refugee Studies
- Coalition of Irish Immigration Centers
- Cuban American Bar Association
- Families for Freedom
- Hebrew Immigrant Aid Society

[1] Amici curiae state that no party or its counsel has authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel have made any monetary contribution to its preparation. This brief is filed with the consent of all parties, and copies of the consent letters have been lodged with the Clerk of the Court.

- Hispanic National Bar Association
- Juvenile Law Center
- Lawyers' Committee for Civil Rights
- Legal Momentum
- Lutheran Immigration and Refugee Service
- Mexican American Legal Defense and Educational Fund
- National Center for Youth Law
- National Council of La Raza
- National Network to End Violence Against Immigrant Women
- New York Immigration Coalition
- Puerto Rican Legal Defense and Education Fund, Inc.
- Puerto Rican Bar Association
- U.S. Committee for Refugees and Immigrants

More detailed descriptions of amici are included in the appendix to this brief.

SUMMARY OF ARGUMENT

Our clients, constituents, and members are workers, employers, students, veterans, parents, and other valued members of American society. They have developed deep roots in our country, working, owning businesses, raising families, paying taxes, and serving in the military. Because of their convictions for drug possession, they are removable under the immigration laws. If incorrectly characterized as traffickers under the immigration laws, these individuals would additionally be labeled "aggravated felons" and subjected to mandatory deportation. As aggravated felons, they would be categorically barred from applying for discretionary, humanitarian relief from

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removal, and permanently denied the opportunity to become U.S. citizens.

Amici urge the Court to recognize the distinction Congress has drawn between simple possession offenses and drug trafficking offenses. The plain language and legislative history of the statutory provision at issue, 8 U.S.C. § 1101(a)(43), underscore the plain meaning distinction between trafficking and possession. Our clients, constituents, and members who have been found guilty of simple possession are not traffickers. Their convictions were not for sale or distribution, but for possession. In the period since their convictions, which in many cases occurred long ago, many have rehabilitated themselves and led peaceful and meaningful lives. They should have the opportunity to seek discretionary, humanitarian relief from removal.

If the Court finds that the statute is unclear in drawing a distinction between simple possession and trafficking, the rule of lenity requires the narrowest reading of the statute, in recognition of the penalties at stake in immigration and criminal cases. If treated as drug traffickers and aggravated felons, our clients, constituents, and members face the harshest of penalties: separation from their spouses and children, many of whom are U.S. citizens, and from the country they served as decorated soldiers.

Amici urge the Court to adopt a reading of the statute that distinguishes between possession and trafficking, and allows our clients, constituents, and members to apply for discretionary, humanitarian relief. The most severe penalties of the immigration laws – reserved for drug traffickers and other aggravated felons – should not be

automatically applied to individuals whose convictions are for simple possession offenses.

BACKGROUND

Those members of our community who are non-citizens with simple possession criminal convictions are already subject to removal under current immigration law. At issue in this case is whether they should be treated as drug traffickers, and thus be subject to the harsh additional penalties that accompany that characterization. Non-citizens with drug trafficking convictions are treated as aggravated felons, and are categorically barred from applying for virtually all forms of discretionary relief from removal and permanently prohibited from naturalized U.S. citizenship.

A. Non-Citizens With Simple Possession Offenses Are Currently Subject to Removal Under the Immigration and Nationality Act.

The immigration statute imposes severe immigration penalties for virtually every non-citizen convicted of a simple possession offense. Non-citizens with possession convictions are deportable under 8 U.S.C. § 1227(a)(2)(B), which provides that "[a]ny alien who at any time after admission has been convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable."

The question in this case is whether these non-citizens should also be subjected to the *additional* penalties the

Immigration and Nationality Act (INA) reserves for non-citizens with drug trafficking convictions, who are treated as aggravated felons under the immigration laws. As aggravated felons, non-citizens convicted of drug trafficking are barred from virtually all forms of discretionary relief from removal, including cancellation of removal and asylum, two forms of humanitarian relief typically available in removal proceedings.[2] They are also permanently barred from naturalized U.S. citizenship.

B. If Treated As Traffickers, Non-Citizens With Simple Possession Convictions Would Be Categorically Barred From Discretionary Cancellation of Removal.

Cancellation of removal is a form of discretionary humanitarian relief available to longtime lawful permanent residents who are deportable. Lawful permanent residents are statutorily eligible for cancellation of removal if they have been lawfully admitted as permanent residents for at least five years, have spent seven continuous years in the United States, and have not been convicted of an aggravated felony. 8 U.S.C. § 1229b(a). If a lawful permanent resident demonstrates eligibility, an

[2] Lawful permanent residents with aggravated felony convictions are also ineligible for family hardship discretionary waivers under 8 U.S.C. § 1182(h) and voluntary departure under 8 U.S.C. § 1229c(b)(1)(C). Lawful permanent residents without aggravated felonies are eligible for discretionary relief under Section 1182(h) if they can demonstrate seven years of continuous residence in the United States and that denial of admission would result in extreme hardship to a spouse, parent, or child who is a U.S. citizen or lawful permanent resident. Voluntary departure is a form of discretionary relief that allows non-citizens to leave within a designated period of time and avoid the burden of removal proceedings.

immigration judge holds an individualized hearing, during which she considers the equities of the non-citizen's case, including work history, family ties in the United States, community involvement and charity work, length of residence, and rehabilitation from any criminal history. *See In re C-V-T-*, 22 I. & N. Dec. 7, 11 (BIA 1998).

A grant of cancellation relief is not automatic upon a showing of statutory eligibility. The immigration judge retains the discretion to deny relief even in cases where a non-citizen is statutorily eligible for cancellation of removal. As the Court has observed in the context of former INA § 212(c), the statutory predecessor to cancellation of removal, "[t]raditionally, courts recognized a distinction between eligibility for discretionary relief, on the one hand, and the favorable exercise of discretion, on the other hand." *INS v. St. Cyr*, 533 U.S. 289, 307 (2001).

If our community members who have simple possession convictions are treated as traffickers and labeled "aggravated felons," they would be barred from cancellation of removal and summarily subjected to removal.[8] An immigration judge would be prohibited from considering even the most compelling individual circumstances,

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[8] Immigrant survivors of domestic violence who are otherwise eligible for a special form of cancellation of removal created by the Violence Against Women Act (VAWA), codified at 8 U.S.C. § 1229b(b)(2), would similarly be subject to summary removal because their possession conviction, if treated as an aggravated felony, would prevent them from meeting the "good moral character" requirement of that form of relief. *See* 8 U.S.C. § 1229b(b)(2)(C); 8 U.S.C. § 1101(f). Cut off from VAWA cancellation relief, these domestic violence victims would face permanent separation from their U.S. citizen children and other family members.

including lengthy residence in the United States,[4] U.S. citizen children and spouses, and demonstrated rehabilitation from a possession conviction.

- Lindy Letisha Simon entered the United States as a lawful permanent resident (LPR) in 1974, when she was 11 years old. Thirty years later, she is a devoted mother and grandmother to a U.S. citizen son and grandson, the wife of an LPR, and a home health aide who is deeply connected to her community in Brooklyn, New York. Ms. Simon's employers characterize her as hard-working and dependable, and numerous community members attest to her devotion to her son. Ms. Simon has only one conviction, for possession of marijuana in 1998, for which she was sentenced to five years probation. Ms. Simon, who is from Trinidad and Tobago, was placed in removal proceedings because of this conviction, and applied for cancellation of removal under 8 U.S.C. § 1229b(a). The immigration judge granted her application for relief, but the Board of Immigration Appeals (BIA) reversed, holding that Ms. Simon is statutorily barred from cancellation because her possession offense constitutes trafficking under 8 U.S.C. § 1101(a)(43)(B).[5]

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[4] *Cf.* Aggravated Felonies and Deportation: How Often is the Aggravated Felony Statute Used? (June 9, 2006), http://www.trac.syr.edu/immigration/reports/158/ (reviewing cases from mid-1997 to May 2006, and concluding that individuals charged with removability based on aggravated felonies have been in the United States on average for 15 years).

[5] *See In re Simon* (BIA May 4, 2006); Respondent's Brief in Opposition to the Appeal of the Department of Homeland Security and in Support of the Decision of the Immigration Judge, *Matter of Simon* (BIA Dec. 12, 2005); Oral Decision of the Immigration Judge, *Matter of Simon* (Immigration Court, New York, NY Sept. 27, 2004). In a letter

(Continued on following page)

C. If Treated As Traffickers, Non-Citizens With Simple Possession Convictions Would Be Categorically Ineligible For Asylum.

Non-citizens who have suffered past persecution or who face a well-founded fear of persecution in their home countries are eligible for asylum under 8 U.S.C. § 1158. A conviction for a "particularly serious crime" is a statutory bar to asylum. 8 U.S.C. § 1158(b)(2)(B)(i). An individual convicted of an aggravated felony is automatically deemed to have been convicted of a "particularly serious crime." *Id.*

As with cancellation of removal, if a non-citizen demonstrates statutory eligibility for asylum, an immigration judge considers the facts of her case at an individualized hearing, during which the non-citizen and the government may present written and oral testimony and argument. Eligibility alone does not result in a grant of asylum. An immigration judge may deny asylum even in a case where a non-citizen is statutorily eligible.

If our community members who have possession convictions are treated as drug traffickers and labeled "aggravated felons," they would be categorically barred

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dated June 14, 2006, amici alerted the Clerk of the Court that this brief would refer to several documents which are not readily available on the Internet or electronic databases. These documents are the types of materials of which the Court may take judicial notice, but in order to avoid any inconvenience to the Court, amici have not sought permission to lodge these materials with the Clerk of the Court at this time. As stated in the letter, amici are prepared to lodge copies of these materials should the Court wish to review them.

from eligibility for asylum, even in cases where they could demonstrate severe persecution abroad.[6]

- Ilya Petrovich Gutnik entered the United States as a refugee in 1993, after he and his parents fled religious persecution in Ukraine, where they experienced violence and harassment because of their Jewish faith, and where Mr. Gutnik suffered a broken collarbone and nose, a puncture wound to his skull, and a severe scalp burn from a scalding stick. After his arrival in the United States, Mr. Gutnik had low self-esteem and became involved with drugs. He was arrested in 2000 for possession of 0.4 grams of heroin, receiving two years of probation under Illinois law. After undergoing drug treatment, Mr. Gutnik turned his life around, enrolling in college – where he earned a 4.0 grade point average – and obtaining a job helping teens overcome drug addiction. In 2002, Mr. Gutnik was placed in removal proceedings. He was deemed ineligible for asylum because his possession conviction was considered an aggravated felony.[7]

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[6] If classified as aggravated felons, victims of human trafficking with drug possession convictions would similarly face return to their country of origin, where they could experience retaliation and brutality by international human trafficking syndicates. Human trafficking victims who have obtained a temporary T visa under 8 U.S.C. § 1101(a)(15)(T) are barred from adjustment to lawful permanent residence if they have been convicted of an aggravated felony, because such a conviction is a bar to the required showing of good moral character. *See* 8 U.S.C. § 1255(1)(B); 8 U.S.C. § 1101(f).

[7] The immigration judge in Mr. Gutnik's case granted him withholding of removal under 8 U.S.C. § 1231(b)(3). *See* Petition for Review of an Order of the Board of Immigration Appeals, *Gutnik v. Gonzales*, No. 05-3007 (7th Cir. Sept. 19, 2005). Mr. Gutnik was statutorily eligible for withholding despite the immigration judge's conclusion that

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D. If Treated As Traffickers, Non-Citizens With Simple Possession Convictions Would Be Permanently Barred From Citizenship.

If treated as drug traffickers, non-citizens with simple possession offenses would not only be barred from cancellation and asylum, but would also be prohibited from ever naturalizing and becoming U.S. citizens. To naturalize, a non-citizen ordinarily must establish that, among other things, she has been a person of "good moral character" within the five years prior to her naturalization application, and that she has continued to exhibit good moral character during the pendency of the application. 8 U.S.C. § 1427(a). A non-citizen convicted of an aggravated felony after 1990 is statutorily barred from establishing good moral character, and is therefore permanently barred from naturalization. 8 U.S.C. § 1101(f)(8).

The lives of our community members with possession convictions illustrate that many of them are the types of individuals whom we should encourage to naturalize: many have lived most of their lives as upstanding residents of the United States, and have been rehabilitated since their single drug possession conviction.

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his possession conviction constituted an aggravated felony because his sentence did not exceed five years. *See* 8 U.S.C. § 1231(b)(3)(B)(ii) (aggravated felony conviction with sentence of at least five years is per se "particularly serious crime" barring eligibility for withholding). Unlike asylum, withholding does not permit Mr. Gutnik to adjust his status to lawful permanent residence under 8 U.S.C. § 1159(b), nor can he ultimately naturalize. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Instead, Mr. Gutnik faces the constant possibility of removal to a third country. *Id.* Further, the standard for withholding is far more stringent than that for asylum, and thus, withholding is not available to many people who meet the well-founded fear of persecution asylum standard. *See id.* at 449.

- Gerald Harris is a 59-year-old lawful permanent resident who has lived in the United States since December 1985. He and his partner Lisa, a U.S. citizen, have two U.S. citizen children. Mr. Harris is an Oxford graduate who owns his home in Wheaton, Illinois, and has an exemplary employment record. He has been arrested or convicted only once in his life, in January 1999, for possession of 2.7 grams of cocaine. He was sentenced to probation and 30 hours of community service. Mr. Harris would like to naturalize and remain in the United States with his family. Unfortunately, however, he was placed in removal proceedings because of his possession conviction. If his possession offense is considered an aggravated felony, Mr. Harris can never naturalize because he is statutorily barred from meeting the good moral character requirement under 8 U.S.C. § 1101(f)(8).[8]

ARGUMENT

I. The Court Should Recognize the Clear Statutory Distinction Between Trafficking and Simple Possession.

The plain language of 8 U.S.C. § 1101(a)(43)(B) and available legislative history show that Congress has drawn a line between simple possession and trafficking crimes. Section 1101(a)(43)(B) nowhere mentions possession, instead referring twice to the term "trafficking." *See*

[8] Memorandum for Leave to File for Cancellation of Removal, *Matter of Harris* (Immigration Court, Chicago, IL May 26, 2004); Letter from Gerald Harris to Jayashri Srikantiah (June 2, 2006) (on file with Jayashri Srikantiah, counsel for amici).

8 U.S.C. § 1101(a)(43)(B) ("illicit trafficking in a controlled substance . . . including a drug trafficking crime. . . ."). The "ordinary or natural" meaning (*Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004)) of "trafficking" is an offense that involves an element of trade, exchange, distribution for remuneration, or sale, rather than mere possession. *See* Black's Law Dictionary 1534 (8th ed. 2004).

A reading of § 1101(a)(43)(B) to include trafficking, but not simple possession, is supported by the text immediately following that statutory section. Section 1101(a)(43)(C) makes "illicit trafficking in firearms or destructive devices" an aggravated felony. This definition excludes firearms possession. *See* Brief of Amici Curiae NYSDA Immigrant Defense Project et al. [hereinafter "IDP Amicus Br."]. A consistent reading of the statute as a whole requires trafficking in both the drug and firearms contexts to refer to trading, exchanging, and selling, not mere possession.

The distinction between trafficking and simple possession is illustrated by the lives and stories of our community members, some of who have no criminal history beyond a single conviction for drug possession.

- Ruben Prado-Rivera is a lawful permanent resident who came to the United States from Mexico when he was 14 years old. He has lived in the United States for 32 years, and has a strong work history. His four children and his parents are U.S. citizens, and his wife is a lawful permanent resident. In 2000, Mr. Prado-Rivera was convicted of possession of less than one gram of cocaine. It was his only conviction, and he received no jail time for the offense. Mr. Prado-Rivera was placed in removal proceedings in

> 2002 because of his possession conviction. The immigration judge characterized his possession conviction as a trafficking offense, and hence, an aggravated felony, and found him ineligible for cancellation of removal under 8 U.S.C. 1229b(a), subjecting him to mandatory deportation without an opportunity to apply for discretionary relief.[9]

Consistent with these stories, in various contexts outside the immigration laws, Congress has recognized the distinction between trafficking and simple possession, applying lesser penalties to simple possessors than to traffickers. For example, in the criminal sentencing context, penalties for individuals who "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense" any controlled substance are significantly harsher than penalties for "simple possession" of that substance. *See* 21 U.S.C. §§ 841, 844. For many substances, simple possession is punishable with a maximum of one year imprisonment, while distribution is punishable with a minimum of five years. *See id.*

Even in the bill that added the "aggravated felony" definition to the INA, Congress differentiated between trafficking and simple possession offenses regarding discretionary denials of federal benefits, establishing longer periods during which benefits can be denied to those convicted of trafficking than to those convicted of simple possession. *See* Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690 § 5301, 102 Stat. 4181, 4310 (1988). Indeed, Senator D'Amato, one of the proponents of the bill's immigration provisions, saw the provisions as "focusing on

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[9] The BIA affirmed. Petition for Writ of Habeas Corpus, *Prado-Rivera v. Ridge*, No. B-04-098 (S.D. Tx. Jun. 17, 2004).

a particularly dangerous class of 'aggravated alien felons,' that is, aliens convicted of murder, and drug and firearms trafficking." 134 Cong. Rec. S17301, S17318 (1988).

The characterization of § 1101(a)(43) as targeting especially destructive criminals, such as drug traffickers, does not contemplate our community members who are longtime, contributing members of our society, and whose convictions are for simple possession.

- Maurilio Garibaldi entered the United States in 1985 and became a lawful permanent resident (LPR) in 1990. He is married to a U.S. citizen and has five U.S. citizen children. He has been continuously employed by the same employer since 1990. In 1999, Mr. Garibaldi was convicted of possession of cocaine and was sentenced to two years probation and no jail time. In 2004, his conviction was vacated, and he pled guilty under the Illinois first offender statute. Mr. Garibaldi was nevertheless placed in removal proceedings in 2004, and the immigration judge held that his possession conviction constituted an aggravated felony, barring him from cancellation of removal under 8 U.S.C. § 1229b(a).[10]

The statutory evolution of the "drug trafficking crime" definition in 18 U.S.C. § 924(c)(2) also illustrates the traditional distinction between trafficking and simple possession. The original language of § 924(c)(2) unambiguously excluded simple possession offenses, defining "drug trafficking crime" as "any felony in violation of Federal law

[10] The BIA affirmed, and Mr. Garibaldi's case is pending before the Seventh Circuit Court of Appeals. Brief and Required Short Appendix of Petitioner, *Garibaldi v. Gonzales*, No. 05-2716 (7th Cir. Aug. 24, 2005).

involving the distribution, manufacture, or importation of any controlled substance." *See* 18 U.S.C. § 924(c)(2) (1982 & Supp. IV 1986). Congress's 1988 modification of the definition has been interpreted merely to clarify the types of trafficking crimes and trafficking conspiracy crimes that are included, rather than to broaden dramatically the categories of offenses the definition covers. *See* IDP Amicus Br.

Reading the term "trafficking" to include the offense of simple possession would punish lawful permanent residents who are well-established, positive contributors to American society and whose sole or most serious conviction is for simple possession.

- Lawful permanent resident Maria Romo has lived in the United States for 23 years, since she was 18 years old. She has three U.S. citizen children, a lawful permanent resident husband, and a U.S. citizen sister. Ms. Romo had no criminal record when she was arrested in 1993, after police found in her car marijuana belonging to a friend of her sister. With little knowledge of the legal system, she followed the advice of her criminal defense attorney, and accepted a deferred adjudication under the Texas Code of Criminal Procedure. No conviction was entered into her record, and, in accordance with then-applicable Fifth Circuit precedent, Ms. Romo was told that her plea would carry no immigration consequences. In 1997, however, Ms. Romo was detained and placed in removal proceedings. She was found to be statutorily ineligible for cancellation of removal under 8 U.S.C. § 1229b(a) because

her deferred adjudication for simple possession was treated as an aggravated felony.[11]

II. The Rule of Lenity Compels An Interpretation That Recognizes the Distinction Between Simple Possession and Trafficking.

Should the Court find that the plain language of 8 U.S.C. § 1101(a)(43) is ambiguous in distinguishing between drug trafficking and drug possession, the "longstanding principle" of lenity demands that the statute be construed narrowly, "in favor of the alien." *St. Cyr*, 533 U.S. at 320 (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987)). The Court in the present instance is confronted with a criminal statute carrying serious criminal (*Toledo-Flores*) and immigration (*Lopez*) consequences. The rule of lenity applies with full force in both contexts. *See Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) ("Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies.").

The rule of lenity – requiring narrow construction of ambiguous statutes – is a robust, ancient principle, articulated in the Court's earliest criminal and immigration jurisprudence. It has long been applied to criminal statutes. *See, e.g.*, *United States v. Wiltberger*, 18 U.S. 76, 95 (1820) ("The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself."). The rule demands strict construction in favor of

[11] Declaration of Maria de Jesus Romo in Support of Petition for Writ of Habeas Corpus and Motion for Modification of Judgment, *State v. Romo*, No. 93-012-3041 (24th Judicial Dist., Tex. July 7, 2003).

criminal defendants to promote "fair notice," "minimize the risk of selective or arbitrary enforcement," and "maintain the proper balance between Congress, prosecutors, and courts." *United States v. Kozminski*, 487 U.S. 931, 952 (1988). Because the Court has long sought to avoid "imputing to Congress an undeclared will," *Bell v. United States*, 349 U.S. 81, 83 (1955), it has reaffirmed the dictum that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Cleveland v. United States*, 531 U.S. 12, 25 (2000). Given the stakes of criminal conviction and the presence of multiple readings of a statute, "it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite. We should not derive criminal outlawry from some ambiguous implication." *United States v. Universal*, 344 U.S. 218, 222 (1952).

The immigration rule of lenity similarly accounts for the dire consequences of deportation. *See Bridges v. Wixon*, 326 U.S. 135, 147 (1945) ("[D]eportation may result in the loss 'of all that makes life worth living.'") (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)); *see also Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947) ("The stakes are indeed high and momentous for the alien who has acquired his residence here."). The Court has reaffirmed the rule of lenity in immigration cases time and again, even as applied to particularly violent crimes. The Court long ago recognized the importance of the rule of lenity in deportation cases in *Fong Haw Tan v. Phelan*, 333 U.S. 6 (1948), addressing a petitioner previously sentenced to life imprisonment for two counts of murder. The Court concluded that "because deportation is a drastic measure and at times the equivalent of banishment or exile . . . we will not assume that Congress means to trench on [] freedom beyond that which is required by the

narrowest of several possible meanings of the words used." *Id.* at 10. The Court has consistently applied the rule of lenity to statutes with deportation consequences, across crimes and statutes varying greatly in levels of severity and ambiguity. *Compare Barber v. Gonzales*, 347 U.S. 637 (1954) (invoking lenity to define "entry" as applied to a foreign-born U.S. national convicted of assault with a deadly weapon and second degree burglary); *with Bonetti v. Rogers*, 356 U.S. 691 (1958) (invoking lenity to interpret "entry" as applied to a former criminal Communist Party member); *and Costello v. INS*, 376 U.S. 120 (1964) (invoking lenity to construe the word "is" as applied to a former citizen whose citizenship was revoked after two separate offenses of income tax evasion).

In *Lopez*, as in the Court's recent decision in *Leocal v. Ashcroft*, 543 U.S. 1 (2004), the ambit of the term "aggravated felony" as applied to removal cases is in question. The Court's inquiry in *Leocal* turned on whether a noncitizen's offense of driving under the influence of alcohol could be broadly construed as a "crime of violence" under 18 U.S.C. § 16(b), and thus an "aggravated felony" under 8 U.S.C. § 1101(a)(43). The Court rejected such an expansive reading of 18 U.S.C. § 16(b) on the basis of its plain language, but observed that "even if [it] had lacked clarity on this point, we would be constrained to interpret any ambiguity in the statute in petitioner's favor" under the rule of lenity. 543 U.S. at 12.

Here, the narrowest construction of 8 U.S.C. § 1101(a)(43), and the one most consistent with the rule of lenity, does not construe "illicit trafficking" to encompass drug possession, with the effect of transforming the latter into an aggravated felony. The distinction between selling drugs for profit and possessing them for personal use

would, under the Government's reading, be blurred. The consequence of such a reading for many non-citizens is stark: they would subsequently be deemed aggravated felons, subject to deportation without immigration judge discretion even to consider requests for humanitarian relief from removal.[12] This flouts the rule of lenity by significantly increasing the number of non-citizens who would be barred from discretionary relief and naturalization. The reading most consistent with the rule of lenity follows the narrow construction articulated by Amici NYSDA Immigrant Defense Project et al., in which a trafficking offense must actually involve an element of trade, exchange, or sale. Similarly, in *Toledo-Flores* – which involves both immigration and criminal statutes – the rule of lenity requires a narrow interpretation.

III. Consistent With the Rule of Lenity, the Statute Should Be Interpreted to Avoid Subjecting Non-Citizens to Permanent Separation From Family and Community.

A. Decorated Combat Veterans Who Have Risked Their Lives for This Country, and Who Have Only Simple Possession Convictions, Should Not Be Treated As "Aggravated Felons" and Barred From Discretionary Relief.

Our community includes lawful permanent residents who have served in the U.S. military.[13] War veterans may

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[12] In a recent decision, Judge Posner observed: "The only consistency that we can see in the government's treatment of the meaning of 'aggravated felony' is that the alien always loses." *Gonzales-Gomez v. Achim*, 441 F.3d 532, 535 (7th Cir. 2006).

[13] As of 2003, more than 37,000 lawful permanent residents serve in the U.S. military, comprising approximately 2.7% of the U.S. Armed

(Continued on following page)

suffer post-traumatic stress disorder (PTSD) upon reintegration to the United States.[14] According to a U.S. Department of Veteran Affairs fact sheet, "[s]urvivors may turn to alcohol and drug abuse when they want to avoid the bad feelings that come with PTSD symptoms. Many people use alcohol and drugs as a way to try to cope with upsetting trauma symptoms. . . ."[15]

As with their citizen counterparts, with treatment, non-citizen veterans are able to recover from their addiction, and live successful lives free of drugs. These veterans should not be punished as drug traffickers and barred from discretionary cancellation of removal, through which they could demonstrate rehabilitation to an immigration judge.

- Alberto Torres served honorably in the U.S. Navy from 1989 to 1995, and was noted by his supervisors for his "outstanding" and "superior" performance. He has been a lawful permanent resident of the United States since 1978, and his

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Forces. *See Hearing on H.R. 1685, H.R. 1714, H.R. 1799, H.R. 1275, H.R. 1814 and H.R. 1850 Before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary*, 108th Cong. 1 (2003) (statement of Rep. Hostettler). Approximately 11,800 members of the National Guard and Reserve are non-citizens, out of a total of 1,353,000. *See id.*

[14] According to two recent studies, whereas the estimated lifetime prevalence of post-traumatic stress disorder amongst adult Americans is 5% for men and 10.4% for women, the numbers for American Vietnam theater veterans are 30.9% and 26.9% respectively. U.S. Department of Veteran Affairs, Epidemiological Facts about PTSD, http://www.ncptsd.va.gov/facts/general/fs_epidemiological.html (last visited June 13, 2006) (summarizing National Vietnam Veterans Readjustment Survey and National Comorbidity Survey Report).

[15] Eve B. Carlson, Ph.D. & Joseph Ruzek, Ph.D., *Effects of Traumatic Experiences: a National Center for PTSD Fact Sheet*, http://www.ncptsd.va.gov/facts/general/fs_effects.html (last visited June 13, 2006).

parents, wife, and three children are all U.S. citizens. He has a strong employment history, and he and his wife own their home and several other properties in the U.S. In 2004, Mr. Torres was convicted of possession of less than one gram of cocaine. He has no other criminal record. Subsequent to his conviction, a Texas criminal court granted his motion for a new trial and dismissed his indictment, upon a motion of the district attorney. Nonetheless, Mr. Torres was placed into removal proceedings, and an immigration judge deemed his original possession conviction to be an aggravated felony. Mr. Torres was found to be statutorily ineligible for cancellation of removal under 8 U.S.C. § 1229b(a), and ordered deported.[16]

- Decorated U.S. Navy veteran A.S. left the Philippines for the United States at the age of nine. He enlisted in the U.S. Navy in 1990, and served in Operations Desert Shield and Desert Storm as well as in Somalia. For his service Mr. S received numerous awards, including the National Defense Award, a Navy Unit Commendation, and the Gold Star. While in service, he married and had three U.S. citizen children. Unfortunately, once his military service was complete, he became depressed and developed a short-lived drug habit. Mr. S pled guilty to two possession offenses less than a month apart in December 2002 and January 2003. He completed a substance abuse program immediately thereafter. Mr. S was placed in removal proceedings in 2003, but the Department of Homeland Security ultimately exercised prosecutorial discretion in his case, and

[16] *See* Brief for Petitioner, *Torres v. Gonzales*, No. 05-60906 (5th Cir. Feb. 6, 2006).

his proceedings were terminated.[17] Under the government's interpretation of 8 U.S.C. § 1101(a)(43)(B), individuals like Mr. S would be subjected to mandatory removal.[18]

B. Treating Non-Citizens With Simple Possession Convictions As "Aggravated Felons" Separates U.S. Citizen Children From Their Parents.

Many of our community members are immigrants in mixed-status families, in which lawful permanent residents are spouses and parents of U.S. citizens. If lawful permanent residents with simple possession convictions are treated as traffickers, U.S. citizen children will lose their parents, and U.S. citizen parents will lose their spouses. This separation has a particularly distressing effect on low-income families who cannot afford to fly their children to faraway countries to visit their permanently exiled non-citizen parents. Removal may also mean eliminating financial support from a primary family bread-winner. Children of parents ordered removed will suffer the difficulties of losing the financial and emotional support of a parent.

Longtime permanent resident parents with simple possession convictions should be entitled to a discretionary

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[17] Exercises of prosecutorial discretion are extremely rare. Mr. A.S. would be barred from naturalizing if his possession conviction is deemed an aggravated felony.

[18] Respondent's Pre-Hearing Brief, *Matter of A.S.* (Immigration Court, Eloy, AZ May 15, 2003). Mr. S's attorney requested that his initials be used in this brief to protect his privacy.

cancellation of removal hearing in which they can demonstrate family ties to U.S. citizen children and spouses.

- Erick Ibarra-Cruz is a citizen of Guatemala who became a lawful permanent resident of the United States in 1984. He has twin sons who are U.S. citizens. Their mother, Mr. Ibarra's former spouse, died in 1999, leaving him as their sole provider. Mr. Ibarra's only conviction is for possession of less than 15 grams of cocaine – the lowest amount that could be charged under the applicable statute – for which he received two years of first-offender probation. Mr. Ibarra was placed in removal proceedings in 2003 based on this conviction. Because the immigration judge deemed his possession conviction to be a trafficking offense, and thus an aggravated felony, he was statutorily barred from applying for cancellation of removal under 8 U.S.C. § 1229b(a).[19]

C. Under the Government's Interpretation, Lawful Permanent Residents Who Have Never Served Time for Minor Possession Offenses Would Be Subject to Mandatory Deportation.

Some of our community members have never served any time for their drug possession convictions. The immigration penalty of mandatory deportation and ineligibility for

[19] The BIA summarily affirmed the decision of the immigration judge. Petitioner-Appellants' Brief and Required Short Appendix, *Ibarra-Cruz v. Gonzales*, No. 05-2828 (7th Cir. Sept. 23, 2005).

naturalization are far more severe than any criminal penalty imposed in their cases.[20]

Under the government's position, a non-citizen who has deep ties to the United States, and who pleads guilty to a possession offense (even if he did not know the immigration consequences of doing so at the time), would be subject to mandatory deportation. This would be true even in cases where the non-citizen never served any time for his conviction, and where the non-citizen can demonstrate rehabilitation and deep ties to the United States.

- Martin Abundis is a popular executive chef at Chez Zee restaurant in Austin, Texas.[21] Mr. Abundis is a lawful permanent resident who has lived in the United States since he was 15 years old.[22] In 1995, Mr. Abundis was convicted of possession of less than one gram of cocaine, and was sentenced only to probation.[23] That was his only conviction. Mr. Abundis is now an executive chef at an acclaimed restaurant, and is a regular fixture

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[20] Under the law of some states, non-citizen defendants who do not face incarceration for misdemeanor possession offenses may not be appointed counsel during their criminal proceedings. *See, e.g.*, Colo. Rev. Stat. Ann. § 16-5-501 (2006) (Colorado); Fla. Stat. Ann. § 27.512 (2006) (Florida); Mass. Gen. Laws Ann. ch. 211D, § 2A (2006) (Massachusetts).

[21] *See* Lynette Oliver, *Chefs: Martin Abundis, Chez Zee*, The Good Life, Dec. 2001, at 36; Dale Rice, *Heaven Arrives, via the Dessert Cart*, Austin American Statesman, Nov. 20, 2000, at C2; Dale Rice, *Aside from Some Quibbles, Chez Zee Earns a "Mais Oui,"* Austin American Statesman, Dec. 16, 2004, at 6XL; *Five Chefs, 10 Years, One Good Cause*, Austin American Statesman, Oct. 12, 2005, at E3.

[22] Oliver, *supra* n.20, at 36.

[23] Letter from Simon Azar-Farr, attorney for Mr. Abundis, to Marc Moore, Field Office Director, U.S. Citizenship and Immigration Services (Nov. 18, 2005) (on file with Jayashri Srikantiah, counsel for amici).

on the Austin culinary scene, with deep ties to the community. His wife and three children are U.S. citizens, and all are registered parishioners of the local Catholic church.[24] In 2005, Mr. Abundis was placed in removal proceedings because of his possession conviction. More than twenty individuals wrote letters of support in Mr. Abundis's case, including the former mayor of Austin.[25] Under the law of the Fifth Circuit, however, Mr. Abundis is statutorily ineligible for cancellation of removal under 8 U.S.C. § 1229b(a) because of his possession conviction.[26]

D. If Treated as Traffickers, Non-Citizens With Simple Possession Convictions Face Deportation to Countries Where They Suffered Persecution.

The effect of mandatory deportation is particularly severe for non-citizens who have come to this country to flee persecution abroad. These individuals may suffer from the ongoing traumatic effects of persecution and torture, and some may make the mistake of temporarily turning to drugs or alcohol to cope. However, the lives of our community members illustrate that asylum-seekers can and do rehabilitate themselves from the unfortunate decision to turn to drugs, and any resulting possession conviction.

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[24] *See id.* (attaching letter from church).

[25] *See id.* (attaching letter from Kirk Watson, former Mayor of Austin).

[26] *See Salazar-Regino v. Trominski*, 415 F.3d 436 (5th Cir. 2005), *petition for cert. pending*, No. 05-830 (filed Dec. 22, 2005).

- Jose Sanchez Carbonell fled persecution from Cuba, where he experienced harassment and torture by the police because of his sexual orientation. He was paroled into the United States for humanitarian reasons. Mr. Sanchez was later diagnosed with mild schizophrenia. In 2002, Mr. Sanchez was arrested for possession of less than 1 gram of cocaine in California, and was sentenced to three years probation and a $200 fine. He was subsequently placed in removal proceedings, and applied for asylum. Under the government's position, Mr. Sanchez would be ineligible for asylum because of his drug possession conviction.[27]

CONCLUSION

For the foregoing reasons, Amici urge the Court to reverse the decisions of the courts of appeals.

June 19, 2006

Respectfully submitted,

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[27] *See* Respondent's Pre-Hearing Statement, *Matter of Sanchez Carbonell* (Immigration Court, Chicago, IL Mar. 14, 2006). Mr. Sanchez was granted withholding of removal under 8 U.S.C. § 1231(b)(3), for which the standard is much higher than asylum. *See supra* n.7. A grant of withholding of removal also does not provide a pathway to legal permanent residence or citizenship. *See id.*

DESCRIPTION OF AMICI

The **Asian American Justice Center (AAJC)** is a national non-profit, non-partisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans. Collectively, AAJC and its affiliates, the Asian American Institute, Asian Law Caucus, and the Asian Pacific American Legal Center of Southern California, have over 50 years of experience in providing public policy, advocacy, and community education on a wide range of issues that affect the Asian Pacific American community. Immigration law and policy has a particular impact on the Asian Pacific American community because over two-thirds of our community is foreign-born.

The **Asian American Legal Defense and Education Fund (AALDEF)**, founded in 1974, is a New York-based non-profit organization that defends the civil rights of Asian Americans nationwide through litigation, legal advocacy, and community education. Since the September 11th tragedy, AALDEF has provided legal services to individuals in deportation proceedings and has supported the work of community-based organizations in their advocacy and organizing efforts against unjust deportation policies and the selective targeting of their communities for immigration enforcement.

The **Asian Law Caucus** promotes, advances, and represents the legal and civil rights of the Asian and Pacific Islander communities. The Immigrant's Rights Project at the Asian Law Caucus provides direct representation to individuals facing detention and deportation before immigration courts, the Board of Immigration Appeals (BIA) and the Ninth Circuit Court of Appeals. The Caucus handles numerous applications for cancellation of removal and other forms of criminal waivers for community members facing deportation as a result of prior criminal convictions.

Asian Pacific American Legal Center of Southern California (APALC) was founded in 1983 and is the largest non-profit public interest law firm devoted to the Asian Pacific American community. APALC provides direct legal services to indigent members of the community and uses impact litigation, policy advocacy, community education and leadership development to obtain, safeguard and improve the civil rights of Asian Pacific Americans. APALC has worked in the areas of immigration and immigrants' rights since its founding.

CASA of Maryland is a non-profit agency founded in 1985 that provides multiple services including immigration assistance, employment rights legal representation, employment training and job placement, leadership training, and education to the immigrant and refugee community in Maryland. In addition to providing direct services, CASA organizes domestic workers and women, day laborers, and tenants to work together to build better neighborhoods and stronger communities. CASA also actively involves community members in advocacy efforts that include comprehensive immigration reform. CASA is an active member of the National Capital Immigration Coalition.

The Catholic Legal Immigration Network, Inc. (CLINIC), a subsidiary of the U.S. Conference of Catholic Bishops, is a legal support agency for a national network of 159 charitable programs for immigrants. Its member agencies provide extensive legal representation to persons deemed "aggravated felons," including those with simple possession convictions, under U.S. immigration law. CLINIC attorneys also provide direct legal services to detained immigrants who are facing removal – many as

aggravated felons – in various locations around the country.

The **Center for Gender & Refugee Studies (CGRS)**, based at the University of California, Hastings College of the Law, has a direct and serious interest in the development of immigration law and in the issues under consideration. Founded in 1999, CGRS provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender-related harm and is directly involved in national asylum law and policy across a wide range of issues. The questions under consideration implicate matters of great consequence to CGRS, involving important principles of jurisprudence and statutory construction, with broad ramifications for the uniform administration of the laws.

The **Coalition of Irish Immigration Centers (CIIC)** is a national umbrella organization that represents Irish immigrant organizations providing direct services to immigrants across the United States. CIIC currently has member organizations in New York, New Jersey, Philadelphia, Massachusetts, Illinois, Maryland, California, Wisconsin, Washington and the District of Columbia. CIIC is interested in this case because it is concerned with keeping families together and with ensuring that immigrants are treated fairly and have the opportunity to access to discretionary relief from deportation.

The **Cuban American Bar Association (CABA)** was established in Miami in 1974 by a group of approximately 20 Cuban attorneys adapting to a different culture. CABA now has nearly 2,000 members, representing all segments of the Cuban American legal community. CABA is actively

involved in protecting the human rights and legal interests of Cubans and Cuban Americans.

Families for Freedom (FFF) is a multi-ethnic network for immigrants and their families facing deportation. FFF is increasingly concerned with attempts to remove discretion from immigration judges by further expanding the aggravated felony definition. This expansion has led to the separation of our families without the opportunity for a meaningful hearing before an immigration judge and has resulted in U.S. citizen mothers becoming single parents; breadwinners becoming dependents; bright citizen children having problems in school, undergoing therapy, or being placed into the foster care system; and working American families forced to seek public assistance.

The **Hebrew Immigrant Aid Society (HIAS)**, the oldest international migration and refugee resettlement agency in the United States and the migration arm of the organized American Jewish community, advocates on behalf of refugees, asylum seekers, and immigrants, and for a strong U.S. government policy to offer safe haven to victims of persecution. HIAS believes that our immigration laws must provide a fair process that can make distinctions between immigrants who are a threat to society and those who, while having made mistakes in the past, should be allowed to remain with their families and contribute to their communities.

The **Hispanic National Bar Association (HNBA)** is a non-profit, national association representing the interests of over 27,000 Hispanic American attorneys, judges, law professors, law graduates, law students, legal administrators, and legal assistants or paralegals in the United States and Puerto Rico. The mission of the HNBA is to

improve the study, practice, and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. As a representative of the national Hispanic community, the HNBA also has an interest in promoting justice on issues of concern to Hispanic communities, including the fair implementation of the nation's immigration laws.

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to children involved in the juvenile justice and child welfare systems. JLC works to ensure children are treated fairly by these systems, and that children receive the treatment and services that these systems are supposed to provide, including, at a minimum, adequate and appropriate education, and physical and mental health care. JLC has also represented dependent children involved in immigration cases, and has participated as *amicus* in state and federal courts throughout the country, as well as the United States Supreme Court, in cases in which important rights and interests of children are at stake.

The **Lawyers' Committee for Civil Rights** is a civil rights and legal services organization devoted to advancing the rights of people of color, poor people, and immigrants and refugees. The Lawyers' Committee is affiliated with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C. which was created at the behest of President John Kennedy in 1963. Since the early 1980s, the Lawyers' Committee has litigated scores of major class actions implicating the rights of immigrants and refugees. The organization also has assisted over a thousand individuals seeking asylum in the United

States, and is committed to preserving the rights of those who may now face persecution abroad as a result of simple possession convictions.

Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. As a national organization that provides technical assistance to advocates working with immigrant women and children, Legal Momentum has substantial knowledge and insight into issues of domestic abuse, sexual assault, human trafficking, asylum, immigration reform, and women's rights. As co-chair of the National Network to End Violence Against Immigrant Women, Legal Momentum played a leading role in crafting the immigration provisions in the Violence Against Women Act of 1994 and subsequent reauthorizations in 2000 and 2005.

A cooperative agency of the Evangelical Lutheran Church in America, the Lutheran Church - Missouri Synod and the Latvian Evangelical Lutheran Church in America, **Lutheran Immigration and Refugee Service (LIRS)** has been the U.S. Lutheran expression of service to refugees and migrants in America since 1939. From its beginnings helping refugees from Nazi Germany during World War II to its presence as advocates for the most vulnerable, LIRS seeks to bring new hope and new life to uprooted people all over the world through access to services, resources, and justice. For some 20 years, LIRS has held a special interest in asylum seekers, torture survivors, children and other vulnerable migrants in immigration detention. LIRS supports a nationwide network of legal service providers for those in immigration detention, and continues to advocate for humane and fair laws for all migrants.

The **Mexican American Legal Defense and Educational Fund (MALDEF)** is a national civil rights organization established in 1968. Its principal objective is to secure, through litigation, advocacy, and education, the civil rights of Latinos living in the United States. MALDEF has litigated numerous civil rights cases, in such areas as education, immigration, employment, and voting rights. Through MALDEF's Immigration Program, it has advocated for exclusive federal enforcement of immigration laws to ensure uniformity and consistency in our national immigration policies.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization devoted to using the law to improve the lives of poor children nationwide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL's concern in this case is the effect of the courts of appeals' decisions on the dependent children of parents facing deportation.

The **National Council of La Raza (NCLR)** – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. NCLR joins this brief to support the due process rights of Latino immigrants who are disproportionately affected by the intersection of immigration law with criminal law. NCLR believes that low-level nonviolent drug offenders should not be punished with deportation, and instead, would benefit from programs such as drug treatment and job training.

Founded in 1992, the **National Network to End Violence Against Immigrant Women (the Network)** is a coalition of domestic violence survivors, immigrant women, advocates, activist, attorneys, educators and other professionals working together to end domestic abuse of immigrant women. The Network is co-chaired by the Family Violence Prevention Fund, Legal Momentum, and ASISTA Immigration Technical Assistance Project. Together, these organizations use their special expertise to provide technical assistance, training, and advocacy to their communities. The Network significantly contributed to the passage of the 1994 Violence Against Women Act and has since continued to enhance the legal remedies available to immigrant survivors. Through a collaborative approach, the Network has made great progress in assuring that non-citizen victims of domestic violence, sexual assault, and trafficking are able to flee abuse, survive domestic violence crimes, and receive assistance.

The **New York Immigration Coalition** is an umbrella policy and advocacy organization with more than 150 member groups in New York that work to promote fairness and opportunity for today's immigrants and refugees.

The **Puerto Rican Legal Defense and Education Fund, Inc. (PRLDEF)** is a New York-based private not-for-profit civil rights litigation and advocacy organization that has defended the civil rights and equal protection under the law of Latinos for the past 34 years, with particular interest in protecting voting rights, employment opportunity, fair housing, language rights, educational access, and immigrants' rights. We are interested in this lawsuit because a disproportionately high number of Latino immigrants and their U.S. citizen family members are adversely harmed by the severe consequences that

flow from an aggravated felony finding, including enhanced sentencing, mandatory detention and removal, bars to immigration relief, long-term family separation, and other deprivations of civil rights.

The **Puerto Rican Bar Association (PRBA)** is a professional organization composed of members of the Bar and law students of Latino ancestry and other interested persons. The PRBA was founded to provide a forum for Latino and other lawyers who are interested in promoting the social, economic, professional, and educational advancement of Latino attorneys, the Latino community and the administration of justice, including the fair implementation of the immigration laws of the United States in the Latino community.

U.S. Committee for Refugees and Immigrants (USCRI) is a Washington, D.C.-based non-profit organization with an eighty-year history of service to refugees and immigrants. It works through thirty-five community-based partners to provide direct assistance to immigrants. USCRI operates the National Center for Refugee and Immigrant Children, which provides *pro bono* legal services and social services to hundreds of unaccompanied immigrant facing immigration court removal proceedings in 10 major cities in the United States.